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10/764,096	01/23/2004	Luis Felipe Cabrera	13768.472	8559

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EXAMINER

LOHN, JOSHUA A

ART UNIT	PAPER NUMBER
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2114

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/18/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/764,096	Applicant(s) CABRERA ET AL.	
	Examiner Joshua A. Lohn	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,9-13 and 32 is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,14-18,20,21 and 27-31 is/are rejected.
- 7) ☒ Claim(s) 19 and 22-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL REJECTION

Terminal Disclaimer

The terminal disclaimer filed on 10/3/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of application number 10/763,553 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

Applicant's arguments, see page 12, filed 10/3/2006, with respect to the 35 U.S.C. 101 rejection of claims 14-26 and 32 have been fully considered and are persuasive. The rejection of claims 14-26 and 32 has been withdrawn.

Applicant's arguments, see pages 12 and 13, filed 10/3/2006, with respect to the obviousness-type double-patenting rejection have been fully considered and are persuasive. The provisional rejection of claims 1, 2, 9, 14, 15, 22, 30, and 31 has been withdrawn.

Applicant's arguments, with respect to the 35 U.S.C. 102(b) rejections, filed 10/3/2006 have been fully considered but they are not persuasive.

With respect to applicant's argument, relating to claim 1, that the "flag" as taught by Reynolds, cannot be accurately equated with the "message" of the present application, the examiner respectfully disagrees. Applicant argues that the message is much more complicated and part of a message transaction, which is part of a message exchange pattern. However, the flag can be reasonable interpreted to meet these limitation, where the flag is the message itself, the message transaction is the setting of the flag to indicate the fail safe mode, and the message

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exchange pattern in the process in which the flag is repeatedly modified to indicate the status, see Reynolds col. 6, lines 20-25 and lines 50-57. A broad, reasonable interpretation of this limitation allows the determination of a flag status being received to be equated with “receiving a message”.

With respect to applicant’s arguments, relating to claim 1, that the loading state information cannot be accurately equated with Reynolds’ “loading flag information”, the examiner respectfully disagrees. The act of reading the flag provides the loading of status information since the flag is a state information indicator for indicating failed status, see Reynolds, col. 6, lines 59-64. The argument that the state information must be some form of application or transaction specific structure, while accurate from the specification’s perspective, is irrelevant from a claim perspective as no requirement for the this exists in a broad reasonable interpretation of this claim limitation.

With respect to applicant’s arguments, relating to claim 1, that the limitation of “an act of determining from the state information whether or not the processing instance... is in recovery mode” cannot accurately be equated with Reynolds’ “fail-safe boot”, the examiner respectfully disagrees. Applicant once again argues that determinations are made on an application-by-application, message-by-message- or transaction-by-transaction basis, however the currently claimed limitation does not require any such determination. The claim only requires that a determination from the state information relating to a processing instance associated with the message indicate a recovery mode, as is shown by the flag indicator of Reynolds, where the flag provides the state information and the message, and the processing instance is the operation of the system as a whole, see Reynolds col. 6, lines 25-34.

With respect to applicant's arguments, relating to claim 1, that the branching of process flow as taught by the present invention cannot accurately be equated with the single choice, at startup time, of normal or fail-safe mode in Reynolds, the examiner respectfully disagrees. As discussed above, there is no claim requirement that any indication be done on an individual application or message basis. The current claim limitation language only requires that a branching flow be determined based upon the indication if a processing instance is in a recovery mode. When the processing instance is reasonably interpreted to be equivalent to the basic system operation of Reynolds, it is clear that Reynolds discloses a branching process flow based upon the recovery mode of the system, see col. 6, lines 33-67.

In view of the above arguments, the examiner maintains the 35 U.S.C. 102(b) rejection of the claimed limitations. These same arguments also provide for the rejection of all dependent and equivalent claims, including claims 2-5, 7, 8, and 14-31.

Claim Objections

Claims 1, 6, 9, and 13 are objected to because of the following informalities: in line 3 of each claim it states "may more directly accessed", however the examiner feels that, based upon the language, it should state "may be directly accessed". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 14-18, 20, 21, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al., United States Patent number 5,627,964, published May 6, 1997.

As per claim 1, Reynolds discloses in a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing system, and system memory that may more directly accessed by the one or more processors, a method for recovering from a system failure, the method comprising the following: an act of receiving a message corresponding to a particular message transaction following a message exchange pattern (Reynolds, col. 6, lines 20-25, where the determination of the special flag is the message received); an act of loading state information for the message transaction from persistent memory to system memory in response to having received the message (Reynolds, col. 6, lines 59-64, where the loading of the flag information is inherently persistent because the flag information remains during a computer system reset); an act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode (Reynolds, col. 6, lines 25-34, where the determination is shown in the status of the fail-safe boot); and an act of branching process flow depending on whether or not the processing instance is in recovery mode (Reynolds, col. 6, lines 33-67, where the boot continues based upon the determination of recovery, or fail-safe mode).

As per claim 2, Reynolds further discloses a method in accordance with claim 1, wherein the act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode comprises the following:

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an act of determining that the processing instance is in recovery mode (Reynolds, col. 6, lines 33-54).

As per claim 3, Reynolds further discloses a method in accordance with claim 2, wherein the act of branching process flow depending on whether or not the processing instance is in recovery mode comprises the following: an act of executing recovery code (Reynolds, col. 7, lines 1-17).

As per claim 4, Reynolds further discloses a method in accordance with claim 3, further comprising the following: after executing the recovery code, an act of determining that recovery has completed successfully (Reynolds, col. 7, line 67 through col. 8, line 3).

As per claim 5, Reynolds further discloses a method in accordance with claim 4, further comprising the following: an act of causing the state information to reflect that the processing instance is no longer in recovery mode (Reynolds, col. 6, lines 50-67, where the flag not being reset during a boot attempt discloses causing the state information to reflect no longer in recovery mode).

As per claim 7, Reynolds further discloses a method in accordance with claim 1, wherein the act of determining from the state information whether or not the processing instance associated with the particular transaction is in recovery mode comprises the following: an act of determining that the processing instance is in normal mode (Reynolds, col. 6, lines 55-57).

As per claim 8, Reynolds further discloses a method in accordance with claim 7, wherein the act of branching process flow depending on whether or not the processing instance is in recovery mode comprises the following: an act of executing normal code without executing

recovering code (Reynolds, col. 6, lines 55-57).

As per claims 14-18, 20, and 21, these claims are merely a program product for implementing the methods of claims 1-5, 7, and 8 respectively. Reynolds discloses implementing the system in a software based operating system, which is equivalent to a program product (Reynolds, col. 2, lines 14-67). In addition to teaching the program product, Reynolds teaches all the remaining limitations of these claims in the rejections provide for claims 1-5, 7, and 8 above, and those same rejections apply for claims 14-18, 20, and 21 as well.

As per claim 27, Reynolds further discloses one or more computer-readable media in accordance with claim 14, wherein the one or more computer-readable media are physical memory media (Reynolds, col. 4, lines 1-38).

As per claim 28, Reynolds further discloses one or more computer-readable media in accordance with claim 27, wherein the physical memory media is system memory (Reynolds, col. 4, lines 1-38).

As per claim 29, Reynolds further discloses one or more computer-readable media in accordance with claim 27, wherein the physical memory media is persistent media (Reynolds, col. 4, lines 1-38).

As per claim 30, Reynolds discloses in a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing system, and system memory that may more directly accessed by the one or more

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processors, a method for recovering from a system failure, the method comprising the following: an act of detecting receipt of a message corresponding to a particular message transaction pattern that follows a message exchange pattern (Reynolds, col. 6, lines 20-25, where the determination of the special flag state would have been initiated by some form of message); and a step for identifying an operational mode of a processing instance corresponding to the particular message transaction (Reynolds, col. 6, lines 28-67, where the determination of fail-safe mode is the identification of an operational mode).

As per claim 31, Reynolds further discloses a method in accordance with claim 30, wherein the step for identifying an operational mode of a processing instance corresponding to the particular message transaction comprises the following: an act of loading state information for the message transaction from persistent memory to system memory in response to having received the message (Reynolds, col. 6, lines 59-64, where the loading of the flag is the loading of state information, and the flag is inherently stored persistently because it maintains its value even following system reset); an act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode (Reynolds, col. 6, lines 25-34, where the boot mode indicates if in recovery mode, or fail-safe mode); and an act of branching process flow depending on whether or not the processing instance is in recovery mode (Reynolds, col. 6, lines 33-67, where the boot selection results in the appropriate branching of process flow).

Allowable Subject Matter

Claims 6, 9-13, and 32 are allowable.

Claims 19, and 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua A. Lohn whose telephone number is (571) 272-3661. The examiner can normally be reached on M-F 8-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAL



SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER